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11 *Attorneys for Plaintiffs and the*
 12 *Proposed Class*

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16 CLRB HANSON INDUSTRIES, LLC d/b/a)
 17 INDUSTRIAL PRINTING, and HOWARD)
 18 STERN, on behalf of themselves and all)
 others similarly situated,)

19 Plaintiffs,)

20 vs.)

21 GOOGLE, INC.,)

22 Defendant.)
 23)
 24)
 25)
 26)
 27)
 28)

CASE NO: C05-03649 JW

**PLAINTIFFS' MOTION TO
 ENLARGE TIME**

Local Civil Rule 6-3

Plaintiffs' Motion to Enlarge Time
Case No: C05-03649 JW

Doc. 153978

PRELIMINARY STATEMENT

Plaintiffs reluctantly request that the Court reschedule Plaintiffs' motion for partial summary judgment from October 6, 2006 to November 6, 2006. The October 6, 2006 hearing was set as part of the schedule in the Order Following Case Management Conference (the "CMC Order") which required to Defendant to certify by July 17, 2006 that it had completed production of all documents describing the terms and conditions of the AdWords agreement and that depositions of Plaintiffs would be completed by August 7, 2006. Defendants violated both provisions of the Order by belatedly producing over 20,000 pages of documents and delaying Plaintiffs' depositions to mid-August.

BACKGROUND

The CMC Order

At the CMC, Judge Ware sat with counsel for both parties and, based upon the parties' respective positions as set forth in, *inter alia*, the Joint Case Management Statement, determined that it would be in the interest of justice for Plaintiffs to make a prompt motion for partial summary judgment. Then, together with counsel for both parties, he set the hearing date for Friday, October 6, 2006 as reflected in the CMC Order. During the CMC, Defendant had unsuccessfully sought to have the motion heard at some later date.

The CMC Order further provided that by July 17, 2006, Defendant was to "submit a sworn statement to plaintiffs that it has turned over all documents describing the terms and conditions of the AdWords agreement." CMC Order, ¶ 2.

Defendant did not comply with the Court's Order.

On July 17, 2006, instead of submitting the required statement and otherwise completing production of documents which should, pursuant to F. R. Civ. P. 26(a), have been provided by Defendant months ago, Defendant e-filed a document labeled "Declaration Pursuant to Court's June 27, 2006 Order Following Case Management Conference." The declaration was of a paralegal at Google saying that she "anticipate[s]" completing her review of documents concerning the AdWords program

1 Terms and Conditions by July 21, 2006, and that she would then, forward the documents
2 to outside counsel who would then produce them to Plaintiffs within 5 business days.
3 Thus, Google unilaterally, and indefinitely, extended its own discovery deadline, in
4 disregard of the schedule set by this Court.

5 At no time prior to July 17, 2006, did Defendant alert Plaintiffs, nor this Court,
6 about its intended failure to comply with the Court's directive.

7 On July 31, 2006, Plaintiff received over 20,000 pages from Defendant in hard
8 copy. See Declaration of Michele F. Raphael in Support of Plaintiffs' Motion to Enlarge
9 Time, (the "Raphael Decl."). Defendant failed to produce, and subsequently refused to
10 produce, the documents in electronic format, although that is how they were undoubtedly
11 created and maintained by Google.

12 As noted, any relevant documents concerning the terms of its own AdWords
13 agreement should have been produced by Google in March, when the parties exchanged
14 initial disclosures.

15 Also detailed in the Raphael Decl. is how Defendant unilaterally extended the
16 deposition schedule. On July 11, 2006, Defense counsel advised Plaintiffs' counsel that
17 the attorney it chose to depose Plaintiffs was unavailable in the period of time (by August
18 7) the Court provided for depositions of Plaintiffs.

19 ARGUMENT

20 **Plaintiffs Will Be Prejudiced if they Must File their Motion** 21 **for Partial Summary Judgement by September 1, 2006**

22 As detailed in the Raphael Decl., by ignoring the Court-ordered deadlines and its
23 obligations under Rule 26, Defendant is compelling Plaintiff to request an adjournment of
24 the partial summary judgment motion. On Monday, July 31, 2006, Plaintiffs received
25 seven (7) boxes of documents containing more than 20,000 pages in hard copy. Nowhere
26 in those seven (7) boxes, nor submitted to this Court, is a declaration as to the
27 completeness of production - - although one was required to be filed no later than July
28 17, 2006.

Also as detailed in the Raphael Decl., Defendant has succeeded in delaying the

1 deposition of one, or both, Plaintiffs. More than one month has elapsed since the CMC
2 Order directing said depositions and no deposition has been taken. Both Plaintiffs have
3 been fully available during the Court-appointed time.

4 At this point, Plaintiffs will be prejudiced if they have to proceed with the motion
5 as scheduled. Indeed, Defendant was well aware that its belated document production
6 would prejudice Plaintiffs absent an extension of the partial summary judgment. See
7 Raphael Decl., para. 33 and Exhibit B thereto. Plaintiffs' counsel have to review the
8 documents and prepare for and defend Plaintiffs' depositions. Moreover, Plaintiffs'
9 counsel adjusted their schedule in accordance with the deadlines set forth in the CMC,
10 not the schedule as unilaterally reset by Defendant.

11 Given the events in this case, Plaintiffs request that the partial summary judgment
12 motion be adjourned until Monday, November 6.

13 **CONCLUSION**

14 Based upon the foregoing and the events in this case, Plaintiffs request that the
15 hearing on the partial summary judgment motion be adjourned until Monday, November
16 6, 2006.

17 Dated: August 8, 2006

18 WOLF POPPER LLP

19 By: /s/
20 Lester L. Levy

21 Attorneys for Plaintiffs
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